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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD REED,

Defendant and Appellant.

B293861

(Los Angeles County
Super. Ct. No. BA407423)

APPEAL from an order of the Superior Court of Los Angeles County, David M. Horwitz, Judge. Affirmed.

Catherine White, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

In February 2013, the Los Angeles County District Attorney charged Edward Reed (defendant) in a felony complaint with second degree burglary of a vehicle in violation of Penal Code section 459. The complaint further alleged defendant was convicted of robbery in 1996 and served time in prison. Defendant pled guilty to the burglary and admitted the prior robbery conviction. The trial court struck the alleged prior conviction in the interest of justice and sentenced defendant to probation with a condition that he complete 350 hours of community service.

Defendant's probation was ultimately extended to March 2018 after being revoked and reinstated multiple times. Shortly before defendant's probation expired he admitted to violating the terms of probation by presenting fraudulent documentation of his community service. The trial court revoked his probation and sentenced him to the upper-term of three years in state prison pursuant to Penal Code section 1170(h).

Defendant thereafter filed a series of petitions to recall his sentence pursuant to Penal Code section 1170.18, enacted as part of the Safe Neighborhoods and Schools Act of 2014 (Proposition 47). The first two petitions were denied without prejudice because defendant failed to serve the district attorney's office. Defendant then filed an amended petition, which the trial court denied because defendant's conviction "is not reducible to a misdemeanor under Penal Code section 1170.18."

Defendant filed another petition one week later. The trial court initially made a perfunctory statement on the record that the petition was granted. Just over two weeks later, on October 19, 2018, the trial court explained its earlier order required correcting nunc pro tunc. The court stated: "Prop 47 reduction

case remains a felony. Violation of [Penal Code] section 459, automobile, is not a Prop 47 eligible offense.^[1] The motion is denied.”

Defendant noticed an appeal from the trial court’s ruling on his Penal Code section 1170.18 petition. This court appointed appellate counsel to represent defendant. After examining the record, counsel filed an opening brief raising no issues. On May 6, 2019, this court advised defendant he had 30 days to personally submit any contentions or issues he wished us to consider. We received no response.

We have examined the appellate record and are satisfied defendant’s attorney has complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

¹ Penal Code section 1170.18(a) establishes the criteria for resentencing under Proposition 47. A petitioner must, among other things, have a felony conviction for an offense that would have been a misdemeanor had Proposition 47 been in effect at the time of the offense. Second degree burglary of a vehicle may still be punished as either a misdemeanor or a felony after Proposition 47. (Pen. Code, § 461.)

DISPOSITION

The order denying defendant's Penal Code section 1170.18 petition is affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.